

Town of Frye Island / Application for Park and Ride Facility L-25719-NA-B-N
Request for Board Jurisdiction by The Friends of Raymond Cape

- Friends' April 22, 2013 Reply to the Town's Response

REPLY
TO
RESPONSE OF TOWN OF FRY ISLAND
DEPARTMENT OF ENVIRONMENTAL PROTECTION
DECISION OF COMMISSIONER
MDEP File No. L-25719-NA-B-N

April 22, 2013

Chair, Board of Environmental Protection
Department of Environmental Protection
Bureau of Land And Water Quality.
17 State House Station
Augusta, ME 04333-0017

To Board: Maine Department of Environmental Protection, Bureau of
Land And Water Quality.

Re: Commissioner's Decision: March 22, 2013;
Public Hearing.

Town of Frye Island Cape Road & Quarry Road
Map/Lot: 002/011 & 070/006
Park & Ride For Ferry Landing
MDEP File No. L-25719-NA-B-N

Counsel for the Town of Frye Island advises that the Town of Frye Island has "applied to the Standish Planning Board for Site Plan Approval of a "park and ride" lot located on land in Raymond." The Friends of Raymond Cape have no knowledge, nor interest, in any applications filed with the Standish Planning Board.

The Response filed by the Town of Frye Island appears to be making some argument of *necessity*, supporting its Application, whereas the Town of Frye Island may only be accessed by ferry or private boat. It may be the case that the Town is indeed an island, however, no special rights inure, nor any duties are found to be owed by the Town of Raymond based upon its proximity to Frye Island. Perhaps some rights of access may be found in the succession from the Town of Standish for a ferry terminal and a Park and Ride Facility.

The Friends of Raymond Cape raised an opposition to consideration of the Town of Frye Island's Application for Storm Water Law Permit pursuant to 38 M.R.S.A. § 420 D whereas the Town of Frye Island has failed to demonstrate *all right, title and interest* within its Application.

The Town of Frye Island is without authority under the Maine Constitution, Town Charter and Municipal Statutes to own or develop real property beyond its corporate limits; or to operate a revenue producing public service upon real property outside of the corporate limits of the Town of Frye Island.

This issue of *all right, title and interest* is currently under review by the Maine Attorney General's Office at the request of the DEP Project Manager of this Application. However, there has been no position taken by the Maine Attorney General's Office to date on this issue. The Constitutional, Charter and Statutory disability to demonstrate *all right title and interest* renders the Application incomplete and may not be considered.

The Town of Frye Island by its Response rests its legal argument upon the premise, without citation or authority, that the City of Portland operates the Municipal Airport within the jurisdiction of South Portland. This argument is completely unavailing. The issue before the Department of Environmental Protection is confined to whether the Town of Frye Island, not some other municipality within the State, has such authority under the Constitution, Charter or Municipal Statutes which authorizes the Town of Frye Island to operate a revenue producing public service upon real property outside of the corporate limits of the Town of Frye Island.

The enactment of Private and Special Laws of the 118th legislature at Sec. C-4. P&SL 1975, c. 138, §5, as amended by P&SL 1987, c. 108, §2, which permitted the establishment of Frye Island as an independent town provides in part:

The corporation is authorized and vested with the power, at any legal meeting called for the purpose, to raise the sums of money necessary ... **to build, repair and maintain public wharves and landings; to purchase, maintain and operate ferries or boats for transportation from the island to the mainland...** (Emphasis added).

There was no authority granted within its powers of appropriation to develop a Municipal Park & Ride Facility on the mainland of Raymond Cape. The authority granted by the 118th Legislature to the inhabitants of Frye Island was limited to the appropriation of funds for **public property or public services**, which included the intercourse by ferry from the island to the mainland.

The Legislature has defined *public property* pursuant to 36 M.R.S.A. § 651 (1)(D) as

[t]he property of any public municipal corporation of this State appropriated to public uses, **if located within the corporate**

limits and confines of such public municipal corporation.

(Emphasis added)

The corporate limits of the newly formed Town of Frye Island is delineated under the 118th Legislature Private And Special Laws as

[T]he island in Sebago Lake identified as Frye Island together with the surrounding waters within two-hundred feet (200') from the shoreline of Frye Island,.... The island and surrounding waters described in this section are referred to in this Act as "the Frye Island territory.

Without the power of appropriation, there is no authority to acquire real property or expand services beyond the corporate limits of Frye Island.

The Legislature granted limited powers to municipalities to develop and provide revenue producing public services within its *corporate limits*. Title 30-A § 5403 provides

A municipality may:

1. Revenue-producing municipal facilities. Acquire, construct, reconstruct, improve, extend, enlarge, equip, repair, maintain and operate any revenue-producing municipal facility;

And,

6. Acquisition of land or personalty. Acquire in the municipality's name either by gift, purchase, lease, or the exercise of the right of eminent domain land, rights in land or water or air rights in connection with the construction, reconstruction, improvement, extension, enlargement or operation of revenue-producing municipal facilities; acquire any personal property, that it considers necessary in connection with those activities; and hold and dispose of all real and personal property under its control...;

The enabling act Title 30-A § 5401- 5415 defines improvements for public service, including the provision for parking facilities:

4. Improvements. "Improvements" means those repairs, replacements, additions, extensions and betterments of and to a revenue-producing municipal facility that the municipal officers consider necessary to place or maintain the revenue-producing municipal facility in proper condition for its safe, efficient and economic operation or to meet requirements for service in areas which may be served by the municipality and for which no existing service is being provided.

And

5. Parking facility. "Parking facility" means any land or any interest in land, structure or portions of structures, and improvements on land or structures intended for the off-street parking of motor vehicles by the public for a fee. Any such structure may be either single or multi-level and either at, above or below the surface.

However, these powers, for the purposes of the Frye Island Municipal Park & Ride development, are prescribed to the *corporate limits* as delineated under the Title 30-A § 5401:

(7). Revenue-producing municipal facility. "Revenue-producing municipal facility" means:

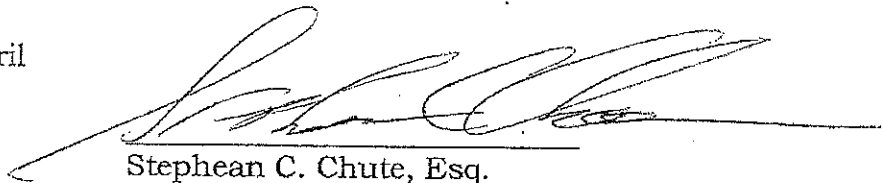
A. A parking facility *within the corporate limits of the municipality.*

(Emphasis added).

Accordingly, the Town of Frye Island is without authority to appropriate funds, nor is the Town of Frye Island vested with the authority for acquisition of real property for the development of a Park and Ride facility beyond the corporate limits of Frye Island. Without this authority, the Town of Frye Island fails to produce evidence of *all good, right, title and interest* and therefore the Application for Storm Water Permit is not complete and may not be reviewed.

The Application of the Town of Frye Island for a Municipal Park & Ride Facility carved into the shore of Sebago Lake is of such public interest of the several towns which share the ecology of the lake that the Board of Environmental Protection will conclude that it should assume jurisdiction and that a public hearing is warranted.

Dated this ^{22nd} day of April



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Code Enforcement Officer, Town of Raymond

Chairman, Planning Board, Town of Raymond

Planner, Town of Raymond.